

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

DEATON'S MECHANICAL CO., INC.

and

Case 25-RC-10116

LOCAL UNION NO. 440, INDIANA PIPE TRADES
ASSOCIATION AND UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED
STATES AND CANADA, AFL-CIO

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on June 10 and 11, 2002, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.¹

I. ISSUE

Local Union No. 440, Indiana Pipe Trades Association and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (herein called the "Petitioner") seeks an election within a unit comprised of the approximately 11 journeymen plumbers, plumber apprentices, and pipefitters working in the plumbing service and plumbing construction departments employed by Deaton's Mechanical Co., Inc. (herein called the "Employer") at its Indianapolis, Indiana facility. The Employer

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

contends that the only appropriate unit is a wall-to-wall unit, encompassing all of its service and construction employees, plus its warehouse and dispatch employees, totaling approximately 42 persons.

II. DECISION

For the reasons discussed in detail below, including the Employer's classification of employees by craft, the plumbing employees performance of traditional craft work, common supervision and the lack of functional integration between crafts, it is concluded that the employees of the plumbing service and plumbing construction departments employed at the Employer's Indianapolis, Indiana facility constitute a unit appropriate for purposes of collective bargaining².

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time journeymen plumbers, plumber apprentices and pipefitters working in the plumbing service and plumbing construction departments at the Employer's Indianapolis, Indiana facility; BUT EXCLUDING all HVAC service employees, HVAC construction employees, HVAC refrigeration service employees, electrical service employees, warehouse and dispatch employees, commercial service and remodeling employees, professional employees, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 11 employees for whom no history of collective bargaining exists.

A. Statement of Facts

1. The Employer's Business Operations

The Employer, Deaton's Mechanical Co., Inc., an Indiana corporation with a principal place of business located in Indianapolis, Indiana, is a mechanical contractor in the construction industry engaged in the repair, installation and construction of commercial and residential mechanical systems. The Employer's field operation is divided into eight departments or profit centers. These profit centers are organized by crafts and consist of Residential/Commercial Plumbing Construction, Residential/Commercial Plumbing Service, Residential HVAC Service,

² The petition filed in the instant case includes pipefitters in the appropriate unit, however, no evidence was presented that the Employer employs anyone in the job classification of pipefitter.

HVAC Residential Construction, Residential/Commercial Electrical Service, Warehouse and Dispatch, Commercial HVAC/Refrigeration Service, and Commercial Service and Remodel. The Employer currently employs approximately 42 individuals in these eight profit centers. Each profit center has a department head who supervises the employees of the profit center. Some profit centers share a department head; for example, Scott Deaton is the department head of both the plumbing construction and the plumbing service profit centers; Bruce Siebert is the department head for HVAC residential construction, electrical service, and warehouse and dispatch, Jim Curry heads up the HVAC service and the commercial HVAC refrigeration service, finally John Morge is the department head for commercial service and remodel³. While each of these individuals oversee the operations of the individual profit centers, Bruce Siebert recently became the Employer's Operations Manager and is now charged with generally overseeing all eight profit centers. Siebert reports directly to President Gary Deaton.

The Employer advertises for new hires using traditional craft designation; classifies its employees by trade; and all of its employees in the plumbing construction and service departments are either licensed journeymen or registered apprentice plumbers. Pursuant to the statute of the State of Indiana employees performing plumbing⁴ work are required to be either licensed as a journeyman or registered as apprentices. Apprentices attend school, sponsored by the Employer, in order to eventually be eligible to take the journeyman test. The Employer asserts that it does not require its plumbing employees to be licensed or to attend school as part of their apprenticeship. However, other testimony contradicts this assertion because it indicates that the Employer will not continue to employ an employee within its plumbing departments if that employee does not wish to continue his education with the goal of becoming a journeyman plumber. Further, the Employer has required that persons hired as plumbers possess either a journeyman plumbing license or an apprentice registration. Employees of other trades, however, may occasionally attend classes or training programs, but are not required to attend such in order to maintain a licensure or certification to remain in their craft. Thus, the evidence indicates that the Employer advertises by trade; hires by trade; classifies its employees by trade, and at least in

³ The parties stipulated that each of these individuals can discipline employees and are supervisors within the meaning of Section 2(11) of the Act.

⁴ "Plumbing" is defined in the Indiana statute in pertinent part at IC 25-28.5-1-2 as:

the practice of and the material and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

(A) Sanitary drainage or storm drainage facilities, the venting system, and the public or private water supply systems within or adjacent to any building or structure.

(B) The practice and materials used in the installation, maintenance, extension, or alteration of the stormwater, liquid waste, or sewerage, and water supply systems of any premises to the private property line or to their connection with any point of public disposal or other acceptable terminal.

respect to its plumber employees, requires that they possess the appropriate state licensure or registration. The various trades have separate tool lists, indicating the tools they are required to carry. Some of the tools listed on the plumbing department list are common to all trades, while others are specific to the plumbing trade.

2. Terms of Employment

All of the construction and service employees receive an hourly wage, between about \$10.00 and \$22.00 an hour, and receive the same benefits. The benefit package offered to all employees includes health insurance, short-term disability benefits and an opportunity to enroll in the Employer's 401(k) plan. In addition, all of the construction and service employees receive the same vacation, holiday, jury duty and bereavement benefits. The construction and service employees are also subject to the same policy manual and wear the same uniforms. All employees are hourly paid and work a base week of 40 hours, receiving time and a half for hours over 40. Wage increases are determined based yearly evaluations performed by the department heads with final approval by Gary Deaton. The construction and service employees begin their work day at staggered times by trade, with the plumbing employees generally starting the earliest, at 7:00 a.m. Once a month the Employer conducts meetings with employees, basically by department. None of the Employer's other employees attend meetings of the plumbing construction and service departments.

3. Functional Integration/Interchange Between Trades

The Employer asserts that there is substantial interchange among the job duties performed by its operations employees. The Employer additionally contends that due to its size, employees regularly move from one profit center to another. In support of this contention the Employer presented various time sheets and work orders. Each employee is required to fill out time sheets, either on a daily or weekly basis. These timesheets contain a work order number or job number, the location of the job and the number of hours worked by the employee on each such job. While the work order numbers do not have any specific designation, all job numbers indicate a specific category of work, such as H for HVAC, C for construction service and remodel, R for refrigeration, and P for plumbing. These designations are used by the Employer to charge the appropriate job for the employees' time. The Employer's witnesses reviewed the time sheets submitted into evidence and provided testimony regarding certain work, as coded on the time sheets, performed by several employees. This testimonial evidence purports to show that several employees in departments other than plumbing, such as the HVAC departments, have performed work which was charged to a job order designated as a plumbing job. The evidence also purports to show that among the timesheets containing work performed by plumbing employees, are job orders classified as HVAC, remodel, and refrigeration jobs. However, the codes on the timesheets are solely used for the Employer's accounting purposes and there is conflicting testimony as to the actual work performed by each individual on the job and whether some of it is actually plumbing work as defined by the Indiana statute. Rather, it appears that some of the work performed by other employees but charged to a plumbing job consists of the work incidental to traditional plumbing functions, such as the delivery of parts, the jackhammering of concrete slabs, and the repair of concrete or drywall. Thus, the time sheets

fail to establish that non-plumbing employees regularly perform skilled plumbing tasks, or vice versa.

Also in support of its contention of functional integration, the Employer submitted 28 work orders during the time period from January 1, 2002 through April 29, 2002, with an additional 3 work orders submitted from the year 2001. These work orders are from jobs generally lasting less than one day and generally consisting of service type work. For the hearing in this matter, the Employer's President Gary Deaton reviewed these documents and noted on each the type of work performed and the profit center/classification of the employee performing the work. Based on conclusions reached by Deaton and noted on the work orders, it appears that plumbing employees performed non-plumbing work on approximately four occasions and that non-plumbing employees performed plumbing work on 12 occasions. Additionally, these work orders indicated non-plumbing employees working outside of their department (not in plumbing) approximately 8 occasions. However, there is no evidence as to how many work orders the Employer generated during the January to April 2002 time period, or what percentage of total work orders the submitted documents represent. Further, there is once again conflicting testimony regarding the actual work performed by the listed employee and whether the work is actually plumbing work or work incidental to traditional plumbing work. Thus, the work orders, too,, fail to establish that members of other trades regularly perform skilled plumbing functions.⁵

The record also contains testamentary evidence regarding employees outside the plumbing departments performing plumbing work. According to current plumbing employees, they sometimes require the help of other employees, especially when they do not have a helper assigned to a job. When this occurs, however, the majority of the time the non-plumbing department employees perform lesser skilled work which is mostly incidental to the work defined by the Indiana statute as plumbing work. These employees primarily help to carry and set in heavy fixtures such as tubs and showers, jackhammer concrete slabs, fill ditches and trenches used for pipe, and patch concrete. On rare occasion, a non-plumbing employee has helped lay pipe. Occurrences of plumbing employees performing work in other departments is even more rare and mostly consists of helping to carry or move heavy fixtures. Evidence provided by current non-plumbing employees indicates again that the primary work performed by them in the plumbing department consists of performing unskilled work incidental to the core functions of a plumber. The exception to this is that non-plumbing department employees have performed some service type work, such as clearing drains, fixing leaky sinks and faucets. Additionally, some employees of the residential HVAC service department have volunteered to help out the plumbing service department and take emergency calls at night. As of the hearing, however, there was no evidence as to the type of plumbing work or the frequency of such work performed by the HVAC employees because the week of the hearing was the first week of this new arrangement.

⁵ Moreover, if the Employer were to permit employees who are not licensed plumbers to perform plumbing work, it is subject to criminal prosecution pursuant to State statute, IC 25-28.5-1-31.

Record evidence of the percentage of time non-plumbing employees perform plumbing-type work and vice versa, is somewhat limited. Operations Manager Siebert testified that the amount of time non-plumbing employees spent performing plumbing work was less than 10%. Employer President Deaton testified that the percentage of this type of crossover was between a high 30% and low 20%. These estimates, however, do not distinguish between time spent performing unskilled work which is incidental to skilled plumbing functions, and time spent performing the plumbing functions defined in state statute. Siebert further testified that the amount of crossover from the plumbing department to other departments is less than 10%. The record contains no evidence that any employee of the Employer has ever transferred from a non-plumbing department into the plumbing departments.

The employees of the different trade departments do have some contact with each other on the Employer's jobsites. The record indicates that while the Employer attempts to stagger each trade's work days on a common jobsite, this does not always occur. The record indicates that employees of the HVAC departments and plumbing departments see each other on jobsites an average of 1-2 times per week. The record further indicates, however, that except in the few situations discussed above, the employees within each craft department perform the specific work traditionally associated with their trade. Contact between the plumbing department employees and warehouse employees is generally limited to times when the plumbing employees stock their trucks and when parts are being delivered by warehouse employees to jobsites. Additionally, most employees come in contact with warehouse and dispatch when first reporting to the facility in the morning before going to the day's jobsite.

B. Discussion

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act", NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting, it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988). In the case at hand the Petitioner seeks a craft unit as a "distinct and homogeneous" group of journeymen, apprentices and pipefitters who primarily engage in tasks not performed by others that require substantial craft skills and the use of specialized tools and equipment, Burns & Roe Service Corp., 313 NLRB 1307, 1308 (1994). The Employer asserts that based on the functional integration between the work performed by its different construction and service departments, the only appropriate unit is one comprised of all of its construction and service employees. The evidence, however, establishes that the plumbing construction and service employees are skilled and experienced plumbers who use specialized tools and equipment in the performance of their duties. The evidence clearly indicates that the plumbing construction and service employees spend the bulk of their time performing traditional plumbing work. Although employees are occasionally given assignments which fall outside traditional plumbing work, the evidence demonstrates that these assignments are rare and relatively short term. Additionally, while non-plumbing employees may perform some of the lesser skilled tasks of the plumbing trade, the evidence does not

demonstrate that these employees regularly or routinely perform the more complicated traditional plumbing work defined by the Indiana statute. The Board has found that a strict separation between crafts is not required in order to find a separate craft unit appropriate. An integration of operations which requires some crossover between craft and non-craft, or between employees of different crafts is permissible. Burns & Roe Services Corp., *Supra* at 1309; E.I. Du Pont & Co., 162 NLRB 413 (1966). Integration of work does not mandate an overall unit unless there is such a fusion of functions, skills and working conditions between different groups of employees so as to obliterate any meaningful lines of a separate group identity. Here, the record evidence shows that any such integration is minimal.

In addition, the employees in the plumbing departments share supervision distinct from employees in the other departments. There is no evidence that the plumbing construction and service employees report to Bruce Siebert as Operations Manager on any regular basis. That all hourly paid construction and service employees receive the same fringe benefits, work the same general hours, with the same policy manual and occasionally work on the same job sites as plumbers, are factors insufficient to overcome the community of interest which exists among the plumbing employees arising from the unique skills and functions they perform which are acquired from schooling and years of on-the-job experience in the trade, and the fact that they generally work together and share the same supervisor. Schaus Roofing, 323 NLRB 781 (1997)

Since the Employer has structurally organized its business by craft; classifies its employees by craft ; since journeymen plumbers and apprentice plumbers perform predominantly functions both traditionally and statutorily defined as the plumbing trade; possess unique skills utilizing tools and equipment unique to their trade; and generally work together under common supervision, it is concluded that all journeymen plumbers and apprentice plumbers and pipefitting employees employed by the Employer at its Indianapolis, Indiana facility constitute a homogeneous group of skilled employees with an identity distinct from the Employer's other operations employees, and thereby comprise an appropriate bargaining unit.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those employees who:

(a) were employed within the above unit during the payroll period ending immediately preceding the date of this Decision, or

(b) have been employed for a total of 30 working days or more within the above unit within a period of 12 months immediately preceding such eligibility date, or

(c) have been employed within the above unit during the 12 months immediately preceding such eligibility date for less than 30 days, but for at least 45 working days during the 24 months immediately preceding such eligibility date, and

(d) have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. In addition to those employees who have been terminated for cause or voluntarily quit, also ineligible to vote are those employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local Union No. 440, Indiana Pipe Trades Association and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO.

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **July 5, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here

imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 12, 2002 .

DATED AT Indianapolis, Indiana, this 28th day of June, 2002.

Roberto G. Chavarry
Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
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